

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR 16 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0402-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
IGNACIO SAENZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200601131

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Ignacio Saenz

Florence
In Propria Persona

H O W A R D, Chief Judge.

¶1 Petitioner Ignacio Saenz seeks review of the trial court's summary dismissal of his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. After a jury trial, Saenz was convicted of resisting arrest, third-degree escape, and unlawful flight from a pursuing law enforcement vehicle. The trial court sentenced him to consecutive, enhanced, maximum prison terms of 2.75 years each for

resisting arrest and escape and 3.75 years for unlawful flight. We affirmed his convictions and sentences on appeal. *State v. Saenz*, No. 2 CA-CR 2009-0075 (memorandum decision filed Apr. 30, 2010).

¶2 Saenz then asserted several claims in a petition for post-conviction relief, which the trial court denied in April 2011. Saenz did not seek our review of that ruling.

¶3 Saenz filed another notice of post-conviction relief in November 2011. As summarized by the trial court, in this successive notice, Saenz alleged “the trial court [had] improperly allowed certain prior convictions to be used” at sentencing and characterized this claim as one of “newly discovered facts.” In dismissing the post-conviction relief notice and denying relief, the court ruled these claims “[did] not constitute newly discovered facts as the facts were available to [Saenz] during his appeal and the subsequent Rule 32 proceedings. He is now attempting to make a legal argument which is precluded.” This petition for review followed.

¶4 On review, Saenz argues the trial court had abused its discretion at sentencing by “allowing the state to use [ten-]year old prior[convictions],” apparently contending this violated state law, court rule, and his constitutional rights. He also asserts his trial counsel had been ineffective at sentencing for failing to object to the court’s consideration of these prior convictions. Although he asserts, in conclusory fashion, that he has established his claim is based on newly discovered evidence, apparently referring to Rule 32.1(e), Saenz does not address on review the court’s determination that his claims are precluded because the facts he relies upon were known

at the time of his sentencing and could have been raised on appeal or in his previous Rule 32 proceeding.¹

¶5 We review a trial court’s denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find no abuse of discretion here.

¶6 As our supreme court has explained,

A colorable claim in a newly-discovered evidence case is presented if the following five requirements are met: (1) the evidence must appear on its face to have existed at the time of trial but be discovered after trial; (2) the motion must allege facts from which the court could conclude the defendant was diligent in discovering the facts and bringing them to the court's attention; (3) the evidence must not simply be cumulative or impeaching; (4) the evidence must be relevant to the case; (5) the evidence must be such that it would likely have altered the verdict, finding, or sentence if known at the time of trial.

State v. Bilke, 162 Ariz. 51, 52-53, 781 P.2d 28, 29-30 (1989). The trial court did not abuse its discretion in concluding Saenz’s claims regarding his prior convictions did not meet these requirements for newly discovered evidence.

¶7 “Because the general rule of preclusion serves important societal interests, Rule 32 recognizes few exceptions.” *State v. Shrum*, 220 Ariz. 115, ¶ 13, 203 P.3d 1175, 1178 (2009). The trial court correctly dismissed Saenz’s notice for failure to state a non-precluded claim. *See* Ariz. R. Crim. P. 32.2(b).

¹Rule 32.1(e) sets forth a ground for relief when a petitioner can show that “[n]ewly discovered material facts probably exist and such facts probably would have changed the verdict or sentence.” Unlike claims pursuant to Rule 32.1(a)-(c), claims grounded on Rule 32.1(e) are not precluded by the failure to raise them “at trial, on appeal, or in any previous collateral proceeding.” Ariz. R. Crim. P. 32.2(a)(3), (b).

¶8

Accordingly, we grant review but deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge